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COURT OF CRIMINAL APPEALS

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PD-0805-16

David Wayne Cahill, Appellant

v.

State of Texas, Appellee

On Discretionary Review from No. 05-15-00577-CR
Fifth District Court of Appeals

On Appeal from the 380th Judicial District Court
Collin County, Texas, Cause Number 380-81088-2012

Appellant's Brief on Grant of State's Request for Discretionary Review

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ORAL ARGUMENT GRANTED

I. Identity of Parties, Counsel, and Judges

David Wayne Cahill, Respondent.

Kristin R. Brown, Attorney for Respondent on appeal and discretionary review

Marcus Norman, Attorney for Respondent at trial

State of Texas, Appellee

Abigail Policastro, Attorney for the State at trial

Lisa Milasky-King, Attorney for the State at trial

Emily Johnson-Liu, Attorney for the State on Appeal

John R. Messinger, ASPA, Attorney for the State on Discretionary Review

Hon. Benjamin Smith, Presiding Judge, 380th Judicial District Court, Collin County

II. Table of Contents

III. Index of Authorities

Cases

Statutes

Rules

IV. Appendix Index

Cahill v. State, 05-15-00577-CR, 2016 Tex. App. LEXIS 6272 (Tex. App.—Dallas, June 14, 2016)(not designated for publication).

V. Statement Regarding Oral Argument

Oral argument has been allowed, and Respondent requests oral argument. *See* Tex. Rule App. Proc. 68.4(c) (2016). This case involves the Interstate Agreement on Detainers Act, an interstate compact designed to resolve pending criminal charges imprisoned in another member state or by the federal government. The outcome of this case impacts prisoners throughout the nation who are or may become subject to detainers out of Collin County, Texas. The issues presented in this Brief are ones of first impression. As a result, Appellant believes that this Court's decisional process will be significantly aided by oral argument.

VI. To the Honorable Judges of the Court of Criminal Appeals:

Appellant David Wayne Cahill respectfully submits this Brief in support of the opinion and judgment of the Fifth District Court of Appeals.

VII. Statement of the Case and Procedural History

Appellant asks this Court to review the *Opinion* and judgment of the Fifth Court of Appeals in *Cahill v. State*, 05-15-00577-CR, 2016 Tex. App. LEXIS 6272 (Tex. App.—Dallas, June 14, 2016) (not designated for publication), in which the Court of Appeals the held that the trial court abused its discretion in failing to grant Appellant's motion for new trial. *Id.* at *19–20. The issue on which the appellate court decided the case was whether Appellant satisfied his burden of proving delivery as required by the Interstate Agreement on Detainers Act (hereafter "IADA"). *Id.* at **7–8, 20. The appellate court found that the evidence in this case, even when viewed in the light most favorable to the trial court's ruling, showed (1) appellant complied with all requirements under the IADA, (2) the prosecuting office, through its designated agent, received notice of Appellant's request for final disposition of his case, along with all other required documentation, and (3) that the state failed to bring Appellant to trial within the statutorily-required 180 days, thereby requiring dismissal of the charges against Appellant. *Id.* In this Brief, Appellant will ask

this Court to affirm the ruling of the Fifth District Court of Appeals. In the alternative, Appellant will ask this Court to remand the case to the Court of Appeals to consider the second issue on appeal, which was not considered due to the favorable ruling on Issue One. Also in the alternative, Appellant will ask this Court to remand the case to the trial court for a hearing to aid resolution of any facts needed for this Court to make a determination on this case.

Respondent was tried and convicted of aggravated robbery and sentenced to 24 years in the Texas Department of Criminal Justice following the denial of his motion to dismiss for violation of the IADA. A motion for new trial was filed regarding the IADA issue and a hearing was held. The trial court did not rule on the matter, but instead allowed it to be overruled by operation of law.

Respondent appealed the Judgment and Sentence. On June 14, 2016, the court of appeals reversed and remanded the case to the trial court with an order to dismiss the charges against Respondent. *Cahill v. State,* 2016 Tex. App. LEXIS 6272, No. 05-15-00577-CR (Tex. App.—Dallas, June 14, 2016) (mem. op., not designated for publication) The appellate court held that the trial court's failure to grant the motion for new trial was an abuse of discretion, even considering implied findings supportable by the evidence offered at the hearing. *Id.* No petition for rehearing was filed.

On July 15, 2016, the State Prosecuting Attorney (SPA) filed a petition for discretionary review alleging three grounds for review: (1) Whether a theory of law offered to prove a violation of the Interstate Agreement on Detainers Act is timely presented if made for the first time in a motion for new trial; (2) Whether a county employee is an agent for the district attorney when it is his duty to retrieve the mail for the prosecuting office; and (3) whether a trial court abused its discretion by failing to believe testimony or drawing inferences contrary to its ruling.

Appellant timely responded to the brief by the SPA on July 27, 2016. On November 9, 2016, this Court granted the petition for discretionary review. Appellant now submits this brief in support of the decision

VIII. Issues Presented

1. **Issue One: Whether a theory of law offered to prove a violation of the Interstate Agreement on Detainers Act is timely presented if made for the first time in a motion for new trial;**
2. **Issue Two: Whether a county employee is an agent for the district attorney when it is his duty to retrieve the mail for the prosecuting office; and**
3. **Issue Three: Whether a trial court abused its discretion by failing to believe testimony or drawing inferences contrary to its ruling.**
4. **Appellant will additionally argue that the State failed to offer any evidence that Appellant was not harmed by the trial court's ruling.**

IX. Facts

1. IADA Procedural History

On March 13, 2014, a detainer was placed on Appellant and faxed from the Collin County District Attorney's Office to the Lexington, Oklahoma facility where Appellant was being held. (RR2, 29; RR6, SX3 (on Motion for New Trial "MNT")).[1] Appellant was notified of his rights under the Interstate Agreement on Detainers Act, providing that in return for Appellant's waiver of extradition on the detainer offense, the State would bring Appellant to trial within 180 days. (RR2, 29–30). On the basis of this contractual promise between the State of Texas and Appellant, Appellant agreed to waive extradition. (RR2, 31).

On April 24, 2014, Appellant completed Form II of the paperwork, as provided by the IADA and prison officials. (RR6, DX 1 MNT). Officials from the Lexington Correctional facility then Forms III and IV, which were signed by the warden, and sent them on April 29, 2017, via certified mail, return receipt requested, to: (1) Ashley Kiel, Assistant District Attorney [in the 380th District Court], 2100 Bloomdale Rd., McKinney, Texas 75071; and (2) 380th District

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[1] The Record on Appeal consists of the Clerk's Record, which is one volume, and the Reporter's Record, which is six volumes. The Clerk's Record is cited as "CR" and followed by the page number, and the Reporter's Record is cited as "RR" followed by the volume and page number. Exhibits are cited as either SX__, for State's Exhibits, or DX__, for Defense Exhibits and are followed by the exhibit number. All exhibits are found within volume six of the Reporter's Record.

Court Clerk, Attn: Laura Green, 2100 Bloomdale Rd., McKinney, Texas 75071. (RR6, DX 1; RR6, SX 1 MNT ¶¶ 1–6; RR6; DX4 MNT; *See also* Docket Sheet Notes, Nov. 21, 2014, from Lisa Channon).

The court clerk received and file-stamped Forms II, III, and IV from the Lexington Correctional Records office, on May 2, 2014. (CR 16–19; RR6, DX1). These items bore certified mail return receipt "CMRR" article number 7004 0750 0002 3017 9913. (CR 16–19; RR6, DX 1). Also on May 2, 2014, the envelope sent by the Oklahoma Correctional Records Office containing all of the requisite IADA forms, addressed as stated *supra*, and bearing CMRR article number 7004 0750 0002 3017 9937, was signed as received by the District Attorney's office. (RR6, DX 2 MNT; RR6, DX 4 MNT).

On November 17, 2014, more than 180 days after the paperwork had been delivered to the proper parties, the court and district attorney's office received copies of Defendant's Motion to Dismiss the Indictment in this case for the state's failure to bring the case to trial within 180 days. (RR6, SX1; CR, 20–22). A second request for hearing was mailed on January 7, 2015. (CR, 23–26). Appellant was brought to Texas on January 21, 2015. (RR6, SX 3 MNT). Appellant was appointed counsel on January 23, 2015. (CR, 29). Appellant's first appearance was on February 6, 2015, and, on that date, the

case was set for jury trial to begin April 6, 2015. (CR, 34). A pretrial hearing was had on April 1, 2015, and the jury trial on April 14, 2015. (CR, 6–11).

2. Hearing on Pretrial Motion to Dismiss Due to IADA Violation

On April 14, 2015, prior to selection and seating of the jury, the trial court heard Defendant's Motion to Dismiss the Indictment for Violation of the IADA (RR2, 19–37; *See also* CR 20–26). Appellant's trial counsel argued that Appellant had done everything that was required under the IADA, that more than 180 days had passed since the requirements were met, and the IADA required dismissal of the indictment against Appellant. (RR2, 20). Appellant testified that he had signed Form II, the notice and request for final disposition, and returned it to personnel at Lexington Correctional Facility, who informed him they would complete the remaining paperwork and send it to the proper parties. (RR2, 30–31). Appellant testified that he did not personally mail the IADA forms, but facility personnel informed him that they were sent. (RR2, 31–32). Valerie Miller, legal secretary for the Collin County District Attorney's office, testified that she, personally, did not receive Appellant's May 2, 2014, paperwork. (RR2, 26). At the pre-trial hearing, there was no evidence offered by trial counsel showing that the Forms received by the District Court were also received by the District Attorney's Office. (*See* RR2, 19–37).

For this reason specifically, the trial court denied the motion to dismiss for violation of the IADA. (RR2, 37)(stating "There is no evidence before me that the prosecuting official, in this case the Collin County District Attorney's Office, received any notice of Mr. Cahill's request for disposition prior to November 17, 2014, therefore, the motion is denied.).

3. Hearing on Motion for New Trial

At the motion for new trial, Appellant presented copies of the return receipt ("Green Card") for the certified mailing of Forms II, III, and IV, which were sent to the District Attorney's office via certified mail. (DX4, MNT; CR 88-90)[2]. Admitted at the hearing on the motion for new trial was an affidavit from Laurel Bogart, custodian of records for the Oklahoma Department of Corrections, which showed that Forms II, III, and IV were sent to the Collin County District Attorney's Office on April 29, 2014; and signed for as received on May 2, 2014. (DX4, MNT; DX5, MNT; CR 88-90). The envelope bore certified mail receipt number 7004 0750 0002 3017 9937 and was addressed to A.D.A. Ashley Keil, 2100 Bloomdale Road, McKinney TX 75071. (DX4, MNT; CR 88-90). The return address is Lexington Correctional Facility, LCC Records, PO Box 260, Lexington, Oklahoma 73051. (CR, 101). The affidavit

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[2] The copy of the "green card" Certified Mail Return Receipt, in the Reporter's Record provided to Appellant for use in preparing this appeal is not a clear copy. However, a clear copy of the same card is provided in Appellant's original motion for new trial and can be found in the clerk's record at CR 88-90).

showed that included within this envelope were IADA Forms II, III, and IV. (DX4, MNT). The envelope containing Forms II, III, and IV was delivered to the Collin County District Attorney's Office on May 2, 2014—the same day on which the same forms were delivered to the trial court. (DX4, MNT; DX 5, MNT; CR 88–90). The card was signed by B. Sommers. (DX4, MNT; DX 5, MNT; CR 88–90).

David Dobecka, the Collin County Support Services Supervisor, was called as a witness for the State. (RR5, 8). Dobecka testified that part of his job is to pick up mail for the Collin County offices from the U.S. Post Office location in McKinney, Texas. (RR5, 8–9). Mail for all county offices, except the tax office, is collected by a Collin County mailroom employee. (RR5, 9). Mailroom personnel personally sign for delivery of all certified mail sent to these offices. (RR5, 9). On May 2, 2014, when Appellant's certified mail envelopes addressed to the court clerk and the prosecutor arrived at the United States Post Office, Bill Sommers was the employee responsible for picking up the mail. (RR5, 10). Dobecka was familiar with and acknowledged Sommers signature on the Green Card from the envelope addressed to the prosecutor. (RR5, 10). Dobecka testified that his office acts as the District Attorney's agent and picks up all of their mail on a daily basis. (R5 9, 11). Sommers was the mailroom employee specifically tasked with collecting and

distributing the mail for the Collin County District Attorney's office on May 2, 2014. (RR5, 11). Dobecka testified that Sommers personally signed, using a stamp or otherwise, the green return receipt card from each piece of certified mail, acknowledging delivery of Appellant's paperwork by the Collin County District Attorney's office. (RR5, 11–14). A signature on the green card acknowledges receipt of the piece of mail. (*See* CR, 100)(signature "upon delivery).

X. Summary of the Arguments

In Issue One, Appellant will argue this Court should find that: 1) because this argument was not properly presented to the appellate court, the State waived the right to present it on discretionary review; 2) Appellant absolutely preserved his right to appeal because the only "theory of law" ever announced was delivery to the District Attorney's Office, and said motion was timely presented to the court both prior to trial and at the motion for retrial—both times during which the trial court retained jurisdiction over the case; 3) Even if this Court found that the agency part of Appellant's argument was a distinct and separate theory, Appellant still advanced it timely.

In Issue Two, Appellant will argue the Fifth District Court of Appeals correctly found that a county employee with the **duty of** collecting all mail, including certified mail, was the District Attorney's agent at the time Appellant's IADA paperwork was received and that his signature acknowledging receipt of Appellant's paperwork bound the State.

In Issue Three, Appellant will argue that the appellate court properly found the trial court abused its discretion in failing to grant Appellant's motion for new trial and failing to subsequently dismiss the indictment against Appellant based on the State's violation of the IADA.

Appellant will additionally argue that the State failed to offer any evidence that Appellant was not harmed by the trial court's ruling.

Appellant will thus ask this Court to affirm the opinion and judgment of the Fifth District Court of Appeals. In the alternative, Appellant will ask this Court to remand the case to the Court of Appeals to consider the second issue on appeal, which was not considered due to the favorable ruling on Issue One. Also in the alternative, Appellant will ask this Court to remand the case to the trial court for a hearing to aid resolution of any facts needed for this Court to make a determination on this case.

XI. Argument

The State of Texas is behaving like a petulant 8-year old. They want to hold a prisoner's feet to the fire under the IADA, but when it is proven that the State did, in fact, receive the required paperwork, and it was proven by the production of the green return receipt card, the State wants to throw up 100 excuses and possibilities that create hyper-technical procedural requirements that the IADA does not provide for.

Art. IX(a) of the IADA states that "this agreement shall be liberally construed so as to effectuate its purposes." Tex. Code Crim. Proc. Art. 51.14.

Art. I of the IADA states: "It is the policy of the party states *and the purpose to this agreement* to encourage the expeditious and order disposition of such charges." "The party states also find that proceeding with reference to such charges and detainers, when emanating from another jurisdiction, cannot properly be had in the absence of cooperative procedures. It is the further purpose of this agreement to provide such cooperative procedures. *Id.*

1. <u>Issue One:</u> **This Court should find that: (1) because this argument was not properly presented to the appellate court, the State waived the right to present it on discretionary review; (2) Appellant absolutely preserved his right to appeal because the only "theory of law" ever announced was delivery to the District Attorney's Office, and said theory was timely presented to the court both prior to trial and at the motion for retrial—both times during which the trial court retained jurisdiction over the case; (3) Even if this Court found that the agency part of Appellant's argument was a distinct and separate theory, Appellant still advanced it timely.**

    i. ***The argument advanced by the State Prosecuting Attorney in Issue One is waived because the State failed to advance it at the first level of appeal.***

The State Prosecuting Attorney's argument in Issue One is that Appellant did not raise the issue on which relief was granted until the motion for new trial, that raising it at this point was somehow untimely, and that Appellant had somehow forfeited his rights under the IADA. (State's Brief at 22). However, at no time when the case was pending before the court of appeals did the State suggest or complain that Appellant had somehow waived his rights under the IADA. In fact, in its brief on appeal, the State admitted to the agency relationship, stating that the CMRR green card addressed to the prosecutor was "signed for by a county employee ***with the duty of collecting mail for the D.A.'s Office.***" (State's Brief on appeal at p.15) (emphasis added). This employee, Bill Sommers, was not the "purported agent" as the State Prosecuting Attorney would have this Court believe. Rather, Bill Sommers

was—at the time of delivery—the un-refuted agent of the Collin County District Attorney's Office for the purpose of receiving the prosecuting office's certified and regular mail.

The scope of discretionary review is determined by the grounds raised in the PDR ***and*** the scope of the opinion of the court of appeals, and not just one or the other. So, the TCCA should **not** review a claim in the PDR that was **not** presented to the court of appeals. See *Bynum v. State*, 767 S.W.2d 769 (Tex. Crim. App. 1987) and *Lambrecht v. State*, 681 S.W.2d 614 (Tex. Crim. App. 1984). And if the state raises an issue in the court of appeals but fails to include it in their PDR, the TCCA should not consider that ground either. See *Hass v. State*, 790 S.W. 2d 609, 610 (Tex. Crim. App. 1990). The SPA has forfeited any right to complain.

ii. Appellant's theory of law as to the reason for dismissal on this case has been, and remains, a singular theory—that all documents required under the IADA to invoke its protections were sent and delivered to the proper prosecuting authority—and this theory was timely presented to the court.

The agency issue is a red herring propounded by the SPA to distract from the real issue, suggesting that this is somehow a new theory—**it is not.** Appellant does not suggest that this Court should affirm the appellate court's ruling on the basis that Appellant sent his forms *to an agent.* Rather,

Appellant believes this Court should affirm the ruling of the appellate court because Appellant's required IADA forms were *sent to and received by the prosecuting attorney.*

The SPA suggests in his brief that the basis for relief in this case was a theory suddenly advanced by Respondent at his motion for new trial. (State's Brief at 22). However, Respondent's sole argument was and continues to be the violation of the IADA by the Collin County District Attorney's office, through its receipt of the required IADA materials, and its failure to bring Respondent to trial within the required 180 days. (CR, 20; RR2, 19–37; RR5; RR 6, SX 1). Respondent's IADA claim was raised pre-trial via written motion, urged, a hearing was held, and the motion was denied. (CR, 20; RR2, 19–37). The motion was re-urged at the Motion for New Trial. (CR, 20; RR5; RR 6, SX 1). Likewise, this was Appellant's issue on appeal. (Appellant's Brief on Appeal at 17) (whether the trial court abused its discretion when it denied the Motion for New Trial because: (1) a State witness testified that the District Attorney's office received Appellant's request for final disposition of his case under the Interstate Agreement on Detainers, which invoked the 180-day trial deadline; (2) the trial deadline passed without trial.).

Although waiver can occur where a defendant fails to raise the violation of the IADA in a pretrial motion to the trial court or accepts "treatment

inconsistent with the IAD's time limits," that did not occur here. (*See* SPA brief at 15, *citing New York v. Hill*, 528 U.S. 110, 118 (2000) (waiver found where the defendant agreed to a continuance putting him outside of the 180-day time limit). Here, Appellant raised the violation in a written pretrial motion. (CR, 20; RR6, SX 1). This motion was urged and a hearing was held on the motion prior to trial. (RR2, 19–37). The trial court denied Appellant's motion. (RR2, 37). That is all that is required under the law.

Next, the SPA argues that the Appellant forfeited the right to appeal the State's violation of the IADA because he did not present his arguments in a timely manner to the trial court prior to trial. (*See* SPA brief at 19)(citing *Neal v. State*, 150 S.W.3d 169, 175–76 (Tex. Crim. App. 2004)). First, this is ludicrous, as Appellant clearly presented his claim in his first and second written and filed motions to dismiss and in the hearing on these motions prior to trial. Second, in *Neal*, the Appellant did not present his claim of prosecutorial misconduct in any type of formal motion. *Neal*, 150 SW.3d at 175. Instead, the claim "was presented at the sentencing hearing after he had been found guilty." *Id.* And "even then, appellant offered this evidence solely in mitigation of punishment, not to support a legal due-process claim requiring dismissal of the indictment." *Id.*

Next, the SPA argues that Appellant's presentation of the claim was not specific. (SPA brief at 20). The SPA cites Tex. R. App. Proc. 33.1 which provides that to preserve a complaint for appellate review, the record must show (1) the complaint was presented in a timely motion stating the grounds with sufficient specificity to make the trial court aware of the complaint, unless such grounds can be inferred, and (2) that the trial court ruled on the motion either expressly or implicitly.... Tex. R. App. Proc. 33.1 (2016). The SPA quotes *Lankston v. State*, 827 S.W.2d 907, 909 (Tex. Crim. App. 1992): "As regards specificity, all a party has to do to avoid the forfeiture of a complaint on appeal is to let the trial judge know what he wants, why he thinks himself entitled to it, and to do so clearly enough for the judge to understand him at a time when the trial court is in a proper position to do something about it." So that it this quote should not be taken out of context, *Lankston* surrounds this with: "The standards of procedural default, therefore, are not to be implemented by splitting hairs in the appellate courts." before the SPA quote; and this followed: "Of course, when it seems from context that a party failed effectively to communicate his desire, then reviewing courts should not hesitate to hold that appellate complaints arising from the event have been lost. But otherwise, they should reach the merits of those complaints without

requiring that the parties read some special script to make their wishes known." *Id.*

Here, Appellant filed two written motions to dismiss, complaining that though he had complied with the requirements of the IADA, the State had failed to bring Appellant to trial within the 180-day limit proscribed by the Act. (CR, 20–26). The trial court held a hearing on Appellant's motions to dismiss and for new trial, at which testimony was heard and evidence accepted. (RR2, 19–37; RR5; RR6, SX 1–5; RR6, DX 1–6). During the hearing *pre-trial* on Appellant's motion to dismiss, Appellant's trial counsel argued that Appellant had done everything that was required under the IADA, that more than 180 days had passed since the requirements were met, and the IADA required dismissal of the indictment against Appellant. (RR2, 20).

The trial court, therefore, had the opportunity to rule on the theory advanced and the State had an opportunity to develop a complete factual record. There is no preservation of error question for this Court to address.

iii. Even if this Court found the agency part of Appellant's argument a distinct and separate theory, Appellant still advanced it timely.

Appellant continued to advance the same argument in his timely motion for new trial as he had advanced in the prior motions to dismiss and the hearings on those motions. (CR, 79–87). The trial court held a hearing on the

matter prior to the 75th day after pronouncement of sentence, which was during the period that the trial court retained plenary power over the case. Tex. R. App. Proc. 21.8 (2016). There can be no doubt but that Appellant "let the trial judge know what he want[ed], why he [thought] himself entitled to it, and [did so] clearly enough for the judge to understand him at a time when the trial court is in a proper position to do something about it."

2. **<u>Issue Two:</u> The appellate court properly found that Sommer's was the agent for the Collin County District Attorney at the time Appellant's IADA paperwork was received and that his signature acknowledging receipt bound the State.**

i. The IADA and current case law

The IADA is a congressionally-sanctioned agreement between the members to the compact. *State v. Miles*, 101 S.W.3d 180, 183 (Tex. App.—Dallas 2003). The agreement allows prosecutors in one jurisdiction, either a member state or the federal government, to acquire persons charged with a crime in their jurisdiction, but imprisoned in another jurisdiction. Tex. Code Crim. Proc. Art. 51.14 (2013). The process is initiated when the receiving state sends notice, called a detainer, to the sending state, specifically, to the facility where the prisoner is being held. *Id.* Upon notice of the detainer, the warden is required to inform the prisoner of the detainer, and of the prisoner's rights under the IADA. *Id.* If the prisoner desires final disposition of his case, and "causes to be delivered" to the prosecutor and court in the jurisdiction of the offense in the receiving state the required paperwork, the receiving state is required to take the prisoner's case to trial within 180 days. *Id.* at Art. III (a). If the receiving state fails to do so, the trial court is required to dismiss the indictment against the prisoner, with prejudice. *Id;* at Arts. III (a), V (c); *Birdwell v. Skeen,* 983 F.2d 1332, 1336 (5th Cir. 1993).

If the prisoner, upon placement of a detainer, chooses to exercise his rights under the IADA, he must complete a request for final disposition—which also identifies the location where the prisoner is being held. Tex. Code Crim. Proc. art. 51.14, Art. III(a), *Burton v. State*, 805 S.W.2d 564, 574 (Tex. App.—Dallas 1991, pet. ref'd). The prisoner's written request must be accompanied by a certificate, signed by the warden of the institution where the prisoner is being held, which states: the term of commitment under which the prisoner is being held; the time already being served, the time remaining to be served on the sentence; the amount of good time earned; the time of parole eligibility of the prisoner; and any decision of the state parole agency relating to the prisoner. Tex. Code Crim. Proc. art. 51.14 (a); *Lara v. State*, 909 S.W.2d 615, 617–18 (Tex. App.—Fort Worth 1995, pet. ref'd).

As stated *supra*, the prisoner must "cause the required paperwork to be delivered to the prosecutor and the proper court having jurisdiction over the case. This is accomplished by the prisoner giving the notice and request for final disposition to the warden, or other official having custody of him, "who shall promptly forward it together with the certificate to the appropriate prosecuting official and court **by registered or certified mail, return receipt requested."** Tex. Code Crim. Proc. art 51.14 (b); *Burton*, 805 S.W.2d at 574. The prisoner's only obligation is to prove that he notified the officials

in the sending state of his desire to resolve the outstanding charges. *Burton*, 805 S.W.2d at 575; *Walker v. State*, 201 S.W.3d 841, 846 (Tex. App. Waco 2006, pet. ref'd).

Once the prisoner complies with all the requirements of article 51.14, he must be brought to trial in the state where charges are pending "within 180 days from the date on which the prosecuting officer and the appropriate court receive" the written request, unless a continuance is granted. *State v. Votta*, 299 S.W.3d 130, 135 (Tex. Crim. App. 2009) (citing Tex. Code Crim. Proc. Ann. art. 51.14, Art. III(a)). If the prisoner has complied with the statutory requirements and is not brought to trial within 180 days, the trial court must dismiss the pending charges with prejudice. Tex. Code Crim. Proc. Ann. art. 51.14, Art. III(d); *Votta*, 299 S.W.3d at 135.

The Supreme Court has only reviewed one case involving IADA, which—despite the SPA's heavy and continued use of it—is easily distinguishable from the case at bar. *Fex v. Michigan*, 507 U.S. 43 (1993). The appellate court was—quite properly—not persuaded by it in deciding the case at bar. *Cahill*, 2016 Tex. App. LEXIS 6272 at *18. The issue in *Fex* was whether the mailbox rule applied to the prisoner's IADA paperwork, starting the timeclock on the day of mailing, or rather the imposition of the 180-days began with the delivery of that paperwork to the prosecuting authority. *Fex*, 507 U.S. at 47.

Despite exhaustive research, Appellant has been unable to locate any cases like Appellant's, possibly because other prosecuting authorities would simply admit that receipt is receipt, and that they failed in their responsibilities, not the prisoner.

The IADA is not just a statute, it is an interstate compact, and, as such, is not subject to unilateral alteration by one of the members to the compact. *See Texas v. New Mexico*, 462 U.S. 554, 564 (1983) (holding that "no court may order relief inconsistent with [a compact's] express terms"); Tex. Code Crim. Proc. art 51.14, preamble ("The contracting states solemnly agree. . . .) (emphasis added); 18 U.S.C. app § 2, preamble ("The contracting states solemnly agree. . . .) (emphasis added); Thomas R. Clark, *The Effect of Violations of the Interstate Agreement on Detainers on Subject Matter Jurisdiction*, 54 Fordham L. Rev. 1209, 1216–17, at fn 38–39, (1986).

Because it is a compact, a prosecutor, whose state is a member of the IAD compact cannot evade his responsibilities under the contract by allowing or assigning an agent to pick up mail addressed to that prosecutor's office. *See United States v. Johnson*, 196 F.3d 1000, 1003 (9th Cir. 1999), (emphasis added). Such a provision is not only forbidden by the compact itself, but would make the contract itself illusory. *See McLaughlin v. Tilendis*, 398 F.2d 287, 290 (7th Cir. 1968). The IADA is federal law, subject to federal construction, due

to being a congressionally sanctioned compact. *United States v. Jones*, 454 F.3d 642, 646 (7th Cir. 2006). The supremacy clause of the Constitution forbids any reading that would allow a unilateral state action to have controlling effect. *See Tilendis*, 398 F.2d at 290 (7th Cir. 1968).

Courts considering delivery of IADA paperwork to an agent have not been as disapproving as the State would like this Court to believe. (*See* SPA brief at 23). The Ninth Circuit held delivery to an agent satisfied the requirements of the IADA, reasoning that the prosecutor's office could not "both designate a manner for delivery *and* argue that delivery made in that manner is invalid." *Johnson*, 196 F.3d at 1003, (emphasis added). "Basically, the government was held responsible for unnecessarily placing the USMS as an intermediary when reliance on the post office would have sufficed." (SPA Brief at 25).

In the second Ninth Circuit case cited by the State, the issue was not delivery to the prosecutor, as the prosecutor conceded that delivery to the Marshall's office constituted such delivery, since the forms in fact provided for such. *United States v. Collins*, 90 F.3d 1420, 1426 (9th Cir. 1996). The issue was delivery to the court. *Id.* Since the court had not given the Marshall's the duty or authority to accept service for them, the Ninth Circuit had no choice but to hold Collins had not followed the law. *Id.*

The Seventh Circuit, in holding that delivery to the U.S. Marshall was not delivery to the prosecutor, did so on the key facts that the IADA forms were sent to the U.S. Marshall's office as opposed to the U.S. Attorney's office, and that the form instructed the prisoner to send them to the U.S. Attorney's office, as opposed to the U.S. Marshall's office. *Jones*, 454 F.3d at 647 (noting that in *Johnson* and *Collins* the inmate was either instructed to deliver to the Marshall's office, or that point was conceded by the government).

The Tenth Circuit, in *United States v. Washington*, 596 F.3d 777, 780–81 (10th Cir. 2010), held that improperly addressed mail, that did not find its way to the US Attorney could not be found as delivered for purposes of the running of the 180-day timeclock.

Finally, in the Second Circuit, the court reasoned that even if they were to hold that detainer paperwork from the U.S. Attorney instructed the warden to return such IADA paperwork to the Marshall, it could not (like in *Collins*) be found to be effective for delivery to the court. *United States v. Parades-Batista*, 140 F.3d 367 (2nd Cir. 1998). Though the holding in *Parades-Batista* was one denying effective service even on behalf of the US Attorney, despite what the form informed them to due, the court held it to be based on the strict law of the IADA—the forms are to be sent to the prosecuting attorney and to the court; they are not to be sent to an intermediary. *Id.* at 373.

Similarly, in *Lindley v. State*, 33 S.W.3d 926, 930 (Tex. App.—Amarillo 2000, pet. ref'd), the defendant sent the required forms to the Lubbock County District Attorney's Office, despite the knowledge that a pro tem from the attorney general's office was acting prosecutor in his case. *Id.* Because of the actual knowledge that another prosecutor had been appointed, Lindley was required to serve that prosecutor's office, not Lubbock County. *Id.*

In the case cited by the SPA, a prisoner "Wells" properly addressed his IADA paperwork to the prosecutor, but the postal worker mistakenly delivered it to a different address, a woman named Little signed for it, but it was not forwarded to the prosecuting authority. *Ohio v. Wells*, 673 N.E. 3d 1008, 1009–10 (Ohio Ct. App., [10th Dist.] 1996, pet. dism'd for lack of constitutional question). A hearing on the matter showed that Little was not employed by the prosecutor, nor was she tasked by that prosecutor with the duty of picking up and receiving the prosecutor's mail. *Id.* The SPA argues "before the court of appeals for the second time Wells, like Appellant, adjusted his argument," arguing for actual delivery to the agent of the prosecutor (because mail was often misdelivered and forwarded between the city attorney and county prosecutor's office, so Little was impliedly the county prosecutors agent), or alternatively constructive delivery based on the close relationship between the offices. (SPA Brief at 30). The court of appeals held

neither constructive notice nor constructive delivery meets the requirements of the IADA. *Wells*, 673 N.E.3d at 1011–12. Appellant would argue that (1) he is not before the court of appeals a second time; (2) Appellant's forms were delivered to the prosecuting authority, they were not misdelivered as in *Wells*; (3) Sommers was in fact tasked with the duty of picking up and receiving all mail for the Collin County District Attorney, both regular and certified, making him the agent for the district attorney; and (4) this is not a case based on constructive notice or delivery.

As *Parades-Batista* shows, the IADA requires adherence to its requirements. The distinguishing factor between this case and every other case cited by Appellant and the SPA is that Appellant followed the law—he followed the requirements of the IADA in sending all required forms by certified mail return receipt requested as required by the IADA. The forms were sent to the clerk's office (where receipt is not contested) and to the prosecutor, directly. Appellant did not send the forms or give them to an agent to give to someone else or to give to the prosecutor. Rather, the warden, as required—sent them **directly to the prosecuting attorney** and the court. Importantly, the green card return receipt from envelope containing the prosecutor's set of forms was addressed not to Bill Sommers, or the Collin County mailroom, but directly to the Collin County District Attorney's Office

and to the attention of the prosecutor. Sommers had actual and/or apparent authority to act as the prosecutor's agent in picking up (receiving) certified and regular mail. Though the Ninth Circuit so aptly reasoned in *Johnson*, the prosecutor's office cannot "both designate a manner for delivery *and* argue that delivery made in that manner is invalid," the flaws here are even more fatal. *See Johnson*, 196 F.3d at 1003. The manner for delivery provided for in *Johnson* was contrary to the law; the manner for delivery followed by Appellant matches the law to the letter. Though the SPA argues otherwise, we are not asking this Court to "embrace agency as a matter of course."

ii. By allowing Sommers to pick up all mail belonging to the District Attorney's office, the District Attorney provided either actual or apparent authority to Sommers—as it's agent.

A review of the record shows that it was the State who actually propounded the agency relationship between the Collin County District Attorney's Office and the Collin County Mailroom, including the employee designated to pick up the mail for the prosecutor's office. (RR5, 8–11). At the hearing on Respondent's motion for new trial, the State called and questioned Collin County Support Services supervisor, David Dobecka. (RR5, 8–15). Respondent merely gathered Dobecka's answers to the State's questions and

then asked a direct question, which was answered in the affirmative by the State's witness. (RR5, 10; RR5, 13).

The State has even admitted to the agency relationship, stating that the CMRR green card addressed to the prosecutor was "signed for by a county employee ***with the duty*** of collecting mail for the D.A.'s Office." (State's Brief on appeal at p.15) (emphasis added). This employee, Bill Sommers, was not simply the "purported agent" of the Collin County District Attorney. Rather, Bill Sommers was—at the time of delivery—the un-refuted agent of the Collin County District Attorney's Office for the purpose of receiving the prosecuting office's certified and regular mail.

Collin County Support Services Supervisor David Dobecka testified at the hearing on the motion for new trial that part of his job was to pick up the mail for 2100 and 2300 Bloomdale Road, McKinney, Texas 75071. (RR5, 8–9). Those addresses include all county offices, except for the tax office, which maintained two separate postal boxes, and includes the District Attorney's office. (RR5, 9–11). At the time the green certified mail card attached to the envelope containing Respondent's IADA forms was signed for as received, Bill Sommers was the agent for the District Attorney's office assigned to pick up its mail. (RR5, 10; RR5, 13). The green certified mail return receipt card was address directly to the prosecutor's office, as required by the IADA. (RR6, DX

4; CR 100). Dobecka recognized and identified Sommers' signature on the back of the green card. (RR5, 10; CR, 100). As of the date of the hearing, June 29, 2015, the mail for the District Attorney's office was continuing to be collected and signed for by Collin County Support Services. (RR5, 11). On some days, as many as 200 pieces of certified mail are received by the agent. (RR5, 13). The signing of the green return receipt card acknowledges delivery of the contents of that envelope. (RR5, 12–14).

Dobecka's statement was not simply "*ipse dixit*," on which the court of appeals based its determination. Rather, the totality of the evidence proved the agency relationship between the mailroom employee tasked with receipt and the District Attorney's office. The Restatement (Third) of Agency §5.02, on which the State relies, states "A notification given to an agent is effect as notice to the principal if the agent has actual or apparent authority to receive the notification." RESTATEMENT (THIRD) OF AGENCY §5.02 (2006); (*See* SPA brief at 7). The State questions, but fails to analyze, whether Sommers had such authority. (*See* SPA brief at 8).

Sommers had express actual authority to act as the agent of the Collin County District Attorney's office on May 2, 2014 in receiving its certified and regular mail. An agent acts with actual authority when he reasonably believes, at the time of the action having legal consequences for the principal,

based on the words or actions of the principal, that the principal would want him to take such action. RESTATEMENT (THIRD) OF AGENCY §3.01 (2006). An agent is a person who is authorized by another to transact business or manage some affair by that person's authority and on account of it. *Crooks v. M1 Real Estate Partners, Ltd.*, 238 S.W.3d 474, 483 (Tex. App. Dallas 2007, *pet. denied*). Actual authority is created through conduct of the principal communicated to the agent. *Gaines v. Kelly*, 235 S.W.3d 179, 182 (Tex. 2007). Actual authority is created by the principal's manifestation—defined as words or conduct—to the agent, that reasonably understood, communicates the principal's desire for the agent to act on the principal's behalf. RESTATEMENT (THIRD) OF AGENCY §3.01 (2006). Express actual authority is delegated to an agent by words that expressly and directly authorize the agent to do an act or series of acts on behalf of the principal. *Crooks*, 238 S.W.3d at 483. Actual authority can also be created by the ratification of the principal. RESTATEMENT (THIRD) OF AGENCY §4.01 (2006).

"Ratification is the affirmance of a prior act done by another, whereby the act is given effect as if done by an agent acting with actual authority." *Id.* A principal "ratifies an act by (a) manifesting assent that the act shall affect the person's legal relations, or (b) conduct that justifies a reasonable assumption that the person so consents." *Id.* As stated *supra*, Dobecka was

the State's witness, and the information establishing agency was solicited by the state and uncontroverted. The green certified mail return receipt card was address directly to the prosecutor's office, as required by the IADA. Sommers, as part of his job as a mailroom employee, picked up the mail for the District Attorney's office, signing for as many as 200 pieces of certified mail per day. On May 2, 2014, Sommers signed for the envelope containing Respondent's required IADA forms, acknowledging delivery. On June 29, 2015, more than one year later, mailroom employees continued to pick up and receive all certified and regular mail for the district attorney's office on a daily basis. This continued course of conduct shows the District Attorney's office gave actual authority to the mailroom employee tasked with picking up and receiving certified and regular mail addressed to the District Attorney's office. Whether the authority is original or ratified, the effect remains the same. *See* RESTATEMENT (THIRD) OF AGENCY §§4.01–4.02 (2006). *See Spring Garden 79U, Inc. v. Stewart Title Co.*, 874 S.W.2d 945, 948 (Tex. App. Houston [1st Dist.] 1994, no writ).

Even if it could be argued that Sommers did not have actual authority, Sommers had apparent authority. "Apparent authority is the power held by an agent . . . to effect a principal's legal relations with third parties when a third party reasonably believes the actor has the authority to act on behalf of

the principal and that belief is traceable to the principals manifestations." RESTATEMENT (THIRD) OF AGENCY §2.03 (2006).

> Apparent authority . . . is based on estoppel arising either from a principal knowingly permitting an agent to hold himself out as having authority or by a principal's actions which lack such ordinary care as to clothe an agent with the indicia of authority, thus leading a reasonably prudent person to believe that the agent has the authority he purports to exercise . . . . Thus to determine an agent's apparent authority, we examine the conduct of the principal and the reasonableness of the third party's assumptions about authority.

Gaines, 235 S.W.3d at 182. This court has stated:

> "Now, it is true that so far as civil obligations and rights are concerned, we are accustomed, in order to express the binding effect of an agent's acts, to say that the act of the agent is the act of the principal. This is a convenient way of stating, in brief language, that, when an agent is authorized, his act binds, not himself, but his principal, just as if it were the act of the principal."

Graham v. State, 121 Tex. Crim. 100, 107 (Tex. Crim. App. 1932).

Here, Respondent sent the envelope containing his required IADA forms directly to the prosecutor, at the prosecutor's address. Sommers signed for receipt of this envelope. Despite the ability to have its own postal box, as the tax office had, the District Attorney's office allowed the mailroom to pick up its mail without complaint, including certified mail, on the date Respondent's envelope was received. This was a manifestation of consent. The office continued to do so for at least another thirteen-plus months, and likely still

does today. The district attorney did not comply; he did not alert the mail room OR the postal office that the mail room employee was not to pick up their mail; he did not complain that Sommer's was doing so without authority (which would in fact be mail fraud, a federal crime under 18 U.S.C. §1708); he did not go pick up the mail himself; and he did not—like the tax office—obtain his own PO Box. Rather, the Collin County District Attorney allowed the mail room employees to sign for all certified or registered letters, all packages, and pick up all mail—without complaint or revision. This creates in all senders of certified mail to the District Attorney's office, in the workers at the post-office, and **in all reasonably prudent persons** a reasonable belief that the mailroom employee, here Sommers, had the authority to receive certified mail for the prosecutor's office. This reasonably prudent belief is directly traceable to the conduct of the principal and no one else. It does not matter whether the agent knew of the resulting legal implications to the principal—he knew what his assigned duty was, and he carried it out. Appellant did not address his IADA paperwork to Sommers; he addressed it to the prosecuting authority. Appellant did not send his IADA paperwork to Sommers; he sent it directly to the prosecuting authority. The responsibility for the required dismissal of this case lay with no one but the Collin County District Attorney—the IADA demands it.

3. **<u>Issue Three:</u> The appellate court correctly found Appellant met his burden to show he complied with the requirements of the IADA and he was entitled to relief.**

Compliance with the IADA is a legal question and was subject to *de novo* review by the trial court. *Walker v. State*, 201 S.W.3d 841, 845 (Tex. App.—Waco 2006, pet. ref'd). Because the trial court did not make written findings of fact, the court did not employ the clearly erroneous standard. *Cahill*, 2016 Tex. App. LEXIS 6272 at *4. However, it did imply findings of fact that supported the trial courts ruling—if the evidence supported those implied findings. *Id.* at *4-5.

The Interstate Agreement on Detainers Act, found in Texas Code of Criminal Procedure Article 51.14, is very simple in its requirements and very simple and direct in its relief for violations by the receiving state. *See* Tex. Code Crim. Proc. art. 51.14 (West 2013). The required forms are to be given by the prisoner to the warden having custody over him, who shall promptly forward it with the certificate to the appropriate prosecuting official and court by registered or certified mail, return receipt requested. *Id.* at Art. III. Appellant did exactly what was required of him. The sending state did exactly what was required of it. The State of Texas received the paperwork, as evidenced by the green card return receipt signed by the District Attorney's agent.

The evidence, through Lauren Bogart's affidavit, showed that the paperwork sent to the Collin County District Attorney was all the paperwork Appellant was required to provide to invoke the IADA. The testimony of Dobecka along with the record evidence, including the green card proved Sommers' authority to sign for the certified mail addressed to the Collin County District Attorney on the day that Appellant's paperwork was received. Record evidence proved that Sommers did in fact sign the CMRR green card acknowledging receipt of the envelope containing Appellant's IADA paperwork. Even implying factual findings in support of the trial courts ruling, as the appellate court was required to do where the evidence supported such implied findings, the Appellant complied with his obligations under the IADA. The State of Texas was required to bring him to trial within 180 days of May 2, 2014, and failed to do so. Appellant was entitled to relief, and the appellate court properly found that the trial court abused its discretion, harming Appellant, in not granting his motion for new trial.

4. The State has failed to offer any evidence that Appellant was not harmed by the trial court's ruling.

The Appellant was harmed by the trial court's failure to grant the motion for new trial in that he was entitled to a dismissal of the charges against him for the State's violation of the IADA. Instead he is faced with a felony conviction and 24 years in prison. The State and the SPA have failed to offer any evidence whatsoever showing that Appellant was somehow not harmed by the error of the trial court.

Because the State (through both the Collin County District Attorney on appeal and the SPA on discretionary review) has failed to show the trial court's error did not harm Appellant, that point must be conceded.

XII. Conclusion and Prayer

For the reasons stated in this Brief, Appellant asks this Court to affirm the opinion and judgment of the Fifth District Court of Appeals. In the alternative, Appellant asks this Court to remand the case to the Court of Appeals to consider the second issue on appeal, which was not considered due to the favorable ruling on Issue One. Also in the alternative, Appellant asks this Court to remand the case to the trial court for a hearing to aid resolution of any facts needed for this Court to make a determination on this case.

Respectfully submitted,

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XIII. Certificate of Service

This certifies that, on the same date as the filing of this motion, a copy of this document was served on the Appellate Division of the Collin County District Attorney's Office, 2100 Bloomdale, Suite 200, McKinney, Texas 75071, by eservice to daappeals@collincountytx.gov and John Messinger, Assistant State Prosecuting Attorney, by eservice to john.messinger@spa.state.tx.us. *See* Tex. Rule App. Proc. 9.5 (2016).

Kristin R. Brown

XIV. Certificate of Compliance with Tex. Rule App. Proc. 9.4

This certifies that this document complies with the type-volume limitations because it is computer-generated and does not exceed 15,000 words. Using the word-count feature of Microsoft Word, the undersigned certifies that this document contains 7772 words in the entire document *except* in the following sections: caption, identity of parties and counsel, statement regarding oral argument, table of contents, index of authorities, statement of the case, statement of issues presented, statement of jurisdiction, statement of procedural history, signature, proof of service, certification, certificate of compliance, and appendix. This document also complies with the typeface requirements because it has been prepared in a proportionally-spaced typeface using Microsoft Word in 14-point font. *See* Tex. Rule App. Proc. 9.4 (2016).

Kristin R. Brown

Appendix

Cahill v. State

Court of Appeals of Texas, Fifth District, Dallas

June 14, 2016, Opinion Filed

No. 05-15-00577-CR

Reporter
2016 Tex. App. LEXIS 6272 *

DAVID WAYNE CAHILL, Appellant v. THE STATE OF TEXAS, Appellee

Notice: PLEASE CONSULT THE TEXAS RULES OF APPELLATE PROCEDURE FOR CITATION OF UNPUBLISHED OPINIONS.

Subsequent History: Petition for discretionary review refused by *In re Cahill, 2016 Tex. Crim. App. LEXIS 1355 (Tex. Crim. App., Nov. 9, 2016)*

Prior History: [*1] On Appeal from the 380th Judicial District Court, Collin County, Texas. Trial Court Cause No. 380-81088-2012.

Core Terms

certified mail, trial court, green card, notice, mail, detainer, tracking, prison, pet, prosecuting, charges, argues, motion for a new trial, motion to dismiss, envelope, days, request for final disposition, prosecuting officer, return receipt, imprisonment, deadline, offices, records, clearly erroneous, district court, incarcerated, requirements, Indictments, paperwork, delivery

Case Summary

Overview
HOLDINGS: [1]-The evidence, even when viewed in the light most favorable to the trial court's ruling, showed appellant complied with his obligations under the IADA and that the prosecuting office, through its designated agent, received notice of appellant's request for final disposition along with all of the required documentation; [2]-Hence, because appellant was not tried in Texas before the expiration of the 180-day deadline, the trial court abused its discretion by overruling his motion for new trial.

Outcome
Reversed and remanded.

LexisNexis® Headnotes

Criminal Law & Procedure > Postconviction Proceedings > Motions for New Trial

Criminal Law & Procedure > ... > Standards of Review > Abuse of Discretion > New Trial

HN1[] The trial court's ruling on a motion for new trial is reviewed under an abuse of discretion standard. This is true whether the trial court denied the motion or allowed it to be overruled by operation of law. The appellate court does not substitute its judgment for that of the trial court, but simply determines whether the trial court's decision was arbitrary or unreasonable.

Criminal Law & Procedure > Preliminary Proceedings > Detainer > Procedural Matters

Criminal Law & Procedure > ... > Standards of Review > Clearly Erroneous Review > Findings of Fact

Criminal Law & Procedure > ... > Standards of Review > De Novo Review > Conclusions of Law

HN2[] The appellate court conducts a de novo review of the legal question of whether there has been compliance with the requirements of the Interstate Agreement on Detainers Act, and any factual findings underlying the trial court's decision are reviewed under a clearly erroneous standard.

Criminal Law & Procedure > ... > Standards of Review > Substantial Evidence > Findings of Fact

HN3[] The appellate court will imply findings of fact that support the trial court's ruling so long as the evidence supports those implied findings.

Criminal Law & Procedure > Preliminary Proceedings > Detainer

HN4[] The Interstate Agreement on Detainers Act (IADA) is an agreement between a number of states, the United States, and the District of Columbia that outlines the cooperative procedures to be used between states when one state seeks to try a defendant who is imprisoned in the penal or correctional institution of another state. *Tex. Code Crim. Proc. Ann. art. 51.14*, art. I. Art. IX of the IADA provides that the agreement shall be liberally construed so as to effectuate its purposes, which, according to art. I, include the expeditious and orderly disposition of outstanding charges and determination of the proper status of any and all detainers based on untried indictments, information or complaints. Art. 51.14, arts. I, IX(a).

Criminal Law & Procedure > Preliminary Proceedings > Detainer > Procedural Matters

HN5[] The prosecuting authority seeking to try an individual who is incarcerated in another state's institution must file a detainer with the institution in the state where the individual is being held. *Tex. Code Crim. Proc. Ann. art. 51.14*, art. III(a). Once the detainer is filed, the warden or other official who has custody of the prisoner must promptly inform the prisoner that a detainer has been filed against him and that he has the right to request a final disposition of the pending charges upon which the detainer is based. Art. 51.14, art. III(c). To request a final and speedy disposition, the prisoner must give or send the warden or other official with custody over him a written notice of the place of his imprisonment and his request for final disposition. Art. 51.14, Art. III(a), (b). The prisoner must include with his request a certificate containing specific information about his current incarceration, e.g., term of commitment, time served, time remaining to be served, good time earned, date of parole eligibility, and any decision of the state parole agency. Art. 51.14, art. III(a).

Criminal Law & Procedure > Preliminary Proceedings > Detainer > Procedural Matters

Governments > Legislation > Statute of Limitations > Time Limitations

HN6[] Under the Interstate Agreement on Detainers Act (IADA), the warden or other official with custody over the prisoner must promptly forward the notice, request, and certificate to the proper prosecuting authority and the court by registered or certified mail, return receipt requested. *Tex. Code Crim. Proc. Ann. art. 51.14*, art. III(b). Alternatively, the defendant can notify the prosecutor and the court of the other state directly; if he does so, he is responsible for seeing that the notice is sent in the form required by the IADA, i.e., the form must be sent by registered or certified mail, return receipt requested. If the prisoner complies with all the requirements in art. 51.14, he must be brought to trial in the state where charges are pending within 180 days from the date on which the prosecuting officer and the appropriate court receive the written request, unless a continuance is granted. Art. 51.14, art. III(a). The

180-day period does not begin until the request for final disposition of the charges is actually received by the court and the prosecutor of the jurisdiction where the charges are pending.

Criminal Law & Procedure > Preliminary Proceedings > Detainer > Procedural Matters

Criminal Law & Procedure > Preliminary Proceedings > Detainer > Timing

Evidence > Burdens of Proof > Allocation

Governments > Legislation > Statute of Limitations > Time Limitations

HN7[] The inmate bears the burden of demonstrating compliance with the procedural requirements of Art. III of the Interstate Agreement on Detainers Act (IADA). A motion to dismiss the charges does not constitute proper notice under the IADA so as to trigger the 180-day deadline under art. III.

Criminal Law & Procedure > Preliminary Proceedings > Detainer > Procedural Matters

Criminal Law & Procedure > Preliminary Proceedings > Detainer > Timing

Criminal Law & Procedure > Preliminary Proceedings > Pretrial Motions & Procedures > Dismissal

Governments > Legislation > Statute of Limitations > Time Limitations

HN8[] If the prisoner has complied with the statutory requirements of the Interstate Agreement on Detainers Act and is not brought to trial within 180 days, the trial court must dismiss the pending charges with prejudice. *Tex. Code Crim. Proc. Ann. art. 51.14*, art. III(d).

Counsel: For Appellants: Kristin R. Brown, Dallas, TX.

For Appellees: Emily Johnson-Liu, McKinney, TX; John R. Rolater, McKinney, TX.

Judges: Before Justices Francis, Lang-Miers, and Myers. Opinion by Justice Myers.

Opinion by: LANA MYERS

Opinion

Opinion by Justice Myers

Appellant David Wayne Cahill was convicted of aggravated robbery and sentenced by the court to twenty-four years in prison. In two issues, he argues the court abused its discretion by denying his motion for new trial that was based on the Interstate Agreement on Detainers Act (IADA), *see Tex. Code Crim. Proc. Ann. art. 51.14* (West 2006), and that the judgment of conviction and sentence are invalid because the trial court lacked subject matter jurisdiction due to the alleged IADA violation. We reverse and remand.

BACKGROUND AND PROCEDURAL HISTORY

The record shows that on March 13, 2014, a detainer[1] was placed on appellant and faxed from the Collin County District Attorney (D.A.)'s Office to the Lexington, Oklahoma prison facility where appellant was being incarcerated. On April 24, 2014, appellant signed the IADA form II, "Offender's Notice of Place of Imprisonment and Request for Disposition of Indictments, Informations, or Complaints." Officials at the Lexington correctional facility then completed IADA form [*2] III, "Certificate of Offender Status," and form IV, "Offer to Deliver Temporary Custody," both of which were signed by the warden. On May 2, 2014, the Collin County District Clerk received and filed three IADA

[1] A detainer is a request by a criminal justice agency that is filed with the institution in which a prisoner is incarcerated asking that the prisoner be held for the agency or that the agency be advised when the prisoner's release is imminent. *State v. Votta, 299 S.W.3d 130, 135 n.5 (Tex. Crim. App. 2009)* (citing *Fex v. Michigan, 507 U.S. 43, 44, 113 S. Ct. 1085, 122 L. Ed. 2d 406 (1993)*).

documents concerning appellant—forms II, III, and IV—from the Lexington Correctional Records Office by certified mail. The certified mail envelope, which was postmarked April 29, 2014, was addressed to the "380th District Court Clerk, Attn: Laura Green," had the return address of the Lexington Correctional Center Records Office, P.O. Box 260, Lexington, KY 73051, and had the certified mail, return receipt number 7004 0750 0002 3017 9913.

On November 17, 2014, appellant filed a pro se request to dismiss his case, relying on the 180-day deadline under the IADA. Appellant filed a pro se request for a hearing on his motion to dismiss on January 12, 2015. He was brought to Texas on January 21, 2015, appointed counsel on January 23, 2015, **[*3]** and his initial appearance with his attorney was on February 6, 2015. On that same day, the case was set for a jury trial to begin on April 6, 2015. A pretrial hearing was held on April 1, 2015, according to the court's docket sheet, and trial took place on April 14, 15, and 16, 2015. The trial court denied appellant's IADA motion to dismiss following a hearing held on April 14, prior to jury selection. Appellant was subsequently convicted by the jury and sentenced by the trial court to twenty-four years in prison. Appellant filed a motion for new trial alleging in part that he had made a proper request for dismissal under the IADA, and that the court should set aside the judgment of conviction. The hearing on the motion for new trial was held on April 29, 2015, and the motion was overruled by operation of law. The court did not file findings of fact and conclusions of law.

DISCUSSION

In his first issue, appellant contends the trial court abused its discretion when it denied appellant's motion for new trial because (1) a State's witness testified that the Collin County D.A.'s office received appellant's request for final disposition of his case under the IADA, *see* Tex. Code Crim. Proc. Ann. art. 51.14, which invoked the **[*4]** 180-day deadline under the IADA, and (2) the 180-day deadline passed without trial.

HN1[↑] The trial court's ruling on a motion for new trial is reviewed under an abuse of discretion standard. Salazar v. State, 38 S.W.3d 141, 148 (Tex. Crim. App. 2001). This is true whether the trial court denied the motion or, as in this case, allowed it to be overruled by operation of law. *See* Mallet v. State, 9 S.W.3d 856, 868 (Tex. App.—Fort Worth 2000, no pet.); Hardemon v. State, No. 05-02-01342-CR, 2003 Tex. App. LEXIS 2903, 2003 WL 1753318, at *5 (Tex. App.—Dallas April 3, 2003, no pet.) (not designated for publication). We do not substitute our judgment for that of the trial court, but simply determine whether the court's decision was arbitrary or unreasonable. Salazar, 38 S.W.3d at 148; Lewis v. State, 911 S.W.2d 1, 7 (Tex. Crim. App. 1995).

HN2[↑] We conduct a de novo review of the legal question of whether there has been compliance with the requirements of the IADA, and any factual findings underlying the trial court's decision are reviewed under a clearly erroneous standard. Celestine v. State, 356 S.W.3d 502, 506 (Tex. App.—Houston [14th Dist.] 2009, no pet.); Walker v. State, 201 S.W.3d 841, 845 (Tex. App.—Waco 2006, pet. ref'd); State v. Miles, 101 S.W.3d 180, 183 (Tex. App.—Dallas 2003, no pet.). Had the trial court made findings of fact concerning its IADA ruling, we would review those findings under the clearly erroneous standard. Kirvin v. State, 394 S.W.3d 550, 555 n.8 (Tex. App.—Dallas 2011, no pet.); Miles, 101 S.W.3d at 183; State v. Sephus, 32 S.W.3d 369, 372 (Tex. App.—Waco 2000, pet. ref'd). But the court did not make any findings in this case. *See* Kirvin, 394 S.W.3d at 555 n.8 (declining to apply clearly erroneous standard because trial court made no findings of fact regarding its IADA ruling). Nevertheless, *HN3*[↑] we will imply findings of fact that support the court's ruling so long as the evidence **[*5]** supports those implied findings. Frangias v. State, 413 S.W.3d 212, 217 (Tex. App.—Houston [14th Dist.] 2013, no pet.) (citing Charles v. State, 146 S.W.3d

204, 208 (Tex. Crim. App. 2004), *superseded in part on other grounds as recognized in* State v. Herndon, 215 S.W.3d 901, 905 n.5 (Tex. Crim. App. 2007)).

HN4[↑] The IADA is an agreement between a number of states, the United States, and the District of Columbia that outlines the cooperative procedures to be used between states when one state seeks to try a defendant who is imprisoned in the penal or correctional institution of another state. Alabama v. Bozeman, 533 U.S. 146, 148, 121 S. Ct. 2079, 150 L. Ed. 2d 188 (2001); State v. Votta, 299 S.W.3d 130, 134-35 (Tex. Crim. App. 2009); *see* Tex. Code Crim. Proc. Ann. art. 51.14, Art. I. Article IX of the IADA provides that the agreement "shall be liberally construed so as to effectuate its purposes," which, according to Article I, include "the expeditious and orderly disposition of [outstanding] charges and determination of the proper status of any and all detainers based on untried indictments, information or complaints." *See* Tex. Code Crim. Proc. Ann. art. 51.14, Arts. I, IX(a).

HN5[↑] The prosecuting authority seeking to try an individual who is incarcerated in another state's institution must file a detainer with the institution in the state where the individual is being held. *Id.* art. 51.14, Art. III(a); Votta, 299 S.W.3d at 135. Once the detainer is filed, the warden or other official who has custody of the prisoner must "promptly" inform the prisoner that a detainer has been filed against him and that he has the right to request a final disposition **[*6]** of the pending charges upon which the detainer is based. Tex. Code Crim. Proc. Ann. art. 51.14, Art. III(c); Votta, 299 S.W.3d at 135. To request a final and speedy disposition, the prisoner must give or send the warden or other official with custody over him a "written notice of the place of his imprisonment and his request for final disposition." Tex. Code Crim. Proc. Ann. art. 51.14, Art. III(a), (b); Votta, 299 S.W.3d at 135. The prisoner must include with his request "a certificate" containing specific information about his current incarceration, e.g., term of commitment, time served, time remaining to be served, good time earned, date of parole eligibility, and any decision of the state parole agency. Tex. Code Crim. Proc. Ann. art. 51.14, Art. III(a); Votta, 299 S.W.3d at 135. HN6[↑] The warden or other official with custody over the prisoner must "promptly forward" the notice, request, and certificate to the proper prosecuting authority and the court by registered or certified mail, return receipt requested. Tex. Code Crim. Proc. Ann. art. 51.14, Art. III(b); Votta, 299 S.W.3d at 135. Alternatively, the defendant can notify the prosecutor and the court of the other state directly; if he does so, he is responsible for seeing that the notice is sent in the form required by the IADA, i.e., the form must be sent by registered or certified mail, return receipt requested. Walker, 201 S.W.3d at 846; Powell v. State, 971 S.W.2d 577, 580 (Tex. App.—Dallas 1998, no pet.); Burton v. State, 805 S.W.2d 564, 575 (Tex. App.—Dallas 1991, pet. ref'd).

If the prisoner complies with all the requirements **[*7]** in article 51.14, he must be brought to trial in the state where charges are pending "within 180 days from the date on which the prosecuting officer and the appropriate court receive" the written request, unless a continuance is granted. Votta, 299 S.W.3d at 135 (citing Tex. Code Crim. Proc. Ann. art. 51.14, Art. III(a)); *see* Kirvin, 394 S.W.3d at 555-56 (grant of reasonable or necessary continuance tolls time limits set out in IADA). The 180-day period does not begin until the request for final disposition of the charges is actually received by the court and the prosecutor of the jurisdiction where the charges are pending. Fex v. Michigan, 507 U.S. 43, 52, 113 S. Ct. 1085, 122 L. Ed. 2d 406 (1993); Powell, 971 S.W.2d at 580. HN7[↑] The inmate bears the burden of demonstrating compliance with the procedural requirements of Article III. Walker, 201 S.W.3d at 846; Lindley v. State, 33 S.W.3d 926, 930 (Tex. App.—Amarillo 2000, pet. ref'd). The court of criminal appeals has held that a motion to dismiss the charges does not constitute proper notice under the IADA so as to trigger the 180-day deadline under Article III. *See* Votta, 299 S.W.3d at 137.

HN8[↑] If the prisoner has complied with the statutory requirements and is not brought to trial within 180 days, the trial court must dismiss the pending charges with prejudice. *Tex. Code Crim. Proc. Ann. art. 51.14, Art. III(d)*; *Votta, 299 S.W.3d at 135*.

There is no dispute in this case that the district court received and filed appellant's request for disposition under the IADA. The question is whether the Collin County D.A.'s Office, [*8] the prosecuting authority, received appellant's IADA forms requesting disposition of his case. The State argues that the first notice the D.A.'s Office had regarding appellant's request for disposition under the IADA was the November 17, 2014 motion to dismiss. At a pretrial hearing held on April 14, 2015, prior to selection and seating of the jury, the trial court heard appellant's motion to dismiss the indictment for violation of the IADA. Appellant testified that while he was incarcerated in Oklahoma in March of 2014, he learned from Barbara Pratt, a caseworker with the Oklahoma Department of Corrections, that there was a Collin County indictment and retainer pending against him. Pratt provided appellant with a form that, as appellant understood it, would waive his right to extradition and initiate the 180-day deadline for him to be tried in Collin County. Appellant testified that he signed the form and returned it to personnel at the prison facility, who informed him they would complete the remaining paperwork and send it to the proper parties. Appellant testified that he did not address the certified mail envelope or decide where the IADA forms should be sent, and he did not personally [*9] mail the forms. As appellant recalled, "The prison was handling all that." Valerie Miller, a legal secretary with the Collin County D.A.'s Office, testified that, as the legal secretary responsible for handling the 380th and the 401st Judicial District Courts, any IADA paperwork concerning appellant would have been sent to her. She testified that she did not receive appellant's May 2, 2014 IADA paperwork and that the first notice the D.A.'s Office had regarding appellant's IADA request was the November 17, 2014 motion to dismiss. The trial court denied the motion to dismiss, concluding the IADA statute explicitly required notice to both the prosecuting official and the court and that there was no evidence before the court that the Collin County D.A.'s Office had received any notice of appellant's IADA request prior to the motion to dismiss.

At the June 29, 2015 hearing on appellant's motion for new trial, appellant introduced three affidavits from Lauren Bogert, the custodian of records at Cimmaron Correctional Facility, Oklahoma Department of Corrections, Cimmaron, Oklahoma. Attached to her third affidavit were four pages of records that, as she stated in the affidavit, had been retrieved [*10] from appellant's file at the Oklahoma Department of Corrections. The third affidavit reads in part:

> Inmate files follow the inmate, therefore this file contains information from David Wayne Cahill's time at Lexington Correctional Center, Lexington Oklahoma. Within David Wayne Cahill's file was the attached Offender's Notice of Place of Imprisonment and Request for Disposition of Indictments, Informations, or Complaints (Form II), Certificate of Offender Status (Form III), Offer to Deliver Temporary Custody (Form IV), Mail Receipt of when these forms were sent and received by Certified Mail.

The attached records are as follows:

> * appellant's executed IADA forms II, III, and IV;
> * a certified mail receipt showing postage was paid in Lexington, Oklahoma on April 29, 2014, on a return receipt for a package sent to A.D.A. Ashley Keil at 2100 Bloomdale Rd., McKinney, TX 75071, tracking number 7004 0750 0002 3017 9937;
> * a certified mail, return receipt, i.e., a "green card," that was addressed to A.D.A. Ashley Keil, 2100 Bloomdate Rd., McKinney, Texas 75071, signed for by "B. Sommers," and had the tracking number 7004 0750 0002 3017

9937.[2]

Appellant also introduced United States Postal Service (USPS) tracking information [*11] showing that a package bearing the same tracking number, 7004 0750 0002 3017 9937, was accepted for outbound delivery in Lexington, Oklahoma on April 29, 2014, at 2:51 p.m., departed a USPS facility in Oklahoma City, Oklahoma, at 11:10 a.m. that same day, and was delivered to McKinney, Texas on May 2, 2014, at 7:12 a.m.

The evidence presented by the State included a similar USPS tracking print-out showing that another package unrelated to this case, tracking number 7004 0750 0002 3017 9944, was accepted for outbound delivery in Lexington at the same time—April 29, 2014, at 2:51 p.m.—but delivered to Oklahoma City, Oklahoma. Like the certified mail envelope that was delivered to the clerk's office, this package shared the first 18 digits of its tracking number with the above green card's tracking number. The State also called David Dobecka, the Collin County support [*12] services supervisor, who testified that part of his job was to pick up the mail for the Collin County offices from the U.S. post office in McKinney, Texas. Mail for all county offices except the tax office, i.e., mail addressed to 2100 and 2300 Bloomdale Road, was collected by a Collin County mailroom employee, and mailroom personnel signed for delivery of all certified mail sent to these offices. Dobecka was familiar with and identified the signature on the green card addressed to Ashley Keil—the one that bore the tracking number 7004 0750 0002 3017 9937—as Bill Sommers, a former mailroom employee. He has since retired. Sommers was the employee responsible for picking up the mail for county departments at the McKinney post office on May 2, 2014, and he was responsible for signing the certified mail green cards. Dobecka testified that the postal employees would bring the green cards in a stack for the mailroom employee to sign, and the employee would go through each card and sign it using a signatory stamp. There could be as many as 200 green cards to sign on a given day. The employee would then deliver the mail to the county offices. Although he was not employed by the Collin County [*13] D.A.'s Office, Sommers was a county employee. Dobecka testified that his department acted on behalf of the D.A.'s Office in collecting their mail and that he and Sommers were agents of the D.A.'s Office for the purpose of picking up the mail. The State also offered the affidavit of Ashley Keil, the felony prosecutor assigned to the 380th District Court from July of 2013 to October of 2014. Keil stated that she was aware of what the IADA required of a D.A.'s office and had never received an IADA request from appellant: "I never received notice of an Interstate Agreement on Detainers request regarding defendant David Wayne Cahill, including via email, phone or postal service."

Appellant's argument is that the State violated the IADA by not trying him within 180 days of the receipt by the Collin County D.A.'s Office of his demand for a speedy trial. Appellant argues that the 180-day time clock began running on May 2, 2014, the day the required forms were received by the trial court and the Collin County D.A.'s office. Appellant further argues that, under the IADA, he had to be brought to trial no later than October 29, 2014, but he was not brought to trial until April 14, 2015, 347 days [*14] after the required paperwork had been, as stated in the IADA, "caused to be delivered to the prosecuting officer and the appropriate court of the prosecuting officer's jurisdiction." *See* Tex. Code Crim. Proc. Ann. art. 51.14, Art. III(a).

The State, however, argues that the signed green card is insufficient to prove delivery in the face of the affidavits and testimony from the D.A.'s Office employees, Valerie Miller and Ashley Keil, that they never received appellant's IADA paperwork. The State contends the package could have been

[2] The copy of the "green card" that is found in the exhibit volume of the reporter's record is difficult to read, but a clearer copy of the same green card is appended to appellant's original motion for new trial. That copy of the green card shows there is a date stamp for May 2, 2014 just underneath B. Sommers's signature.

lost in the mail and that there is little evidence of what it actually contained. It was, the State argues, the trial court's prerogative to determine the facts, and in viewing the record in the light most favorable to the trial court's finding, the trial court could have concluded appellant's request for disposition was not delivered to the prosecuting attorney.[3]

The evidence shows [*15] that appellant was being held at the Lexington Correctional facility in March of 2014 when Collin County officials placed the detainer on him for the instant offense. Officials at the Oklahoma prison facility notified appellant of the detainer, as required by Article III(c). Appellant waived his rights regarding extradition by completing IADA form II, which notified Collin County officials of his place of imprisonment and of his request for final disposition of the case against him under the IADA. Appellant returned form II to the officials at the facility, who completed forms III and IV. There is no dispute in this case that the completed IADA forms included all of the statutorily required information. Officials at the Oklahoma correctional facility then sent copies of forms II, III, and IV to the prosecuting official and to the court via certified mail, return receipt requested, as required under the statute. Receipt by each party has been shown. The court's receipt is evidenced by its May 2, 2014 file-stamp on the forms II, III, and IV in the clerk's record, and the certified mail envelope in the clerk's record. Receipt by the Collin County D.A.'s Office is evidenced by B. Sommers's [*16] May 2, 2014 file-stamped signature on the return receipt green card addressed to Ashley Keil. Although there is no green card in the record other than the one addressed to the prosecutor—the record does not contain a green card addressed to the court—the certified mail envelope in the clerk's record that is addressed to the 380th district court clerk bears a different certified mail tracking number than the one on the green card with the prosecutor's name on it, which is evidence that copies of appellant's IADA paperwork were sent to *both* the court and the prosecutor. The State also argues that appellant offered no evidence from the Lexington prison officials about the contents of any envelope addressed to the D.A.'s Office, nor is such an envelope in the record. But the Cimmaron records custodian, Bogert, attached appellant's executed IADA forms II, III, and IV to her third affidavit, along with a receipt from the purchase of a return receipt green card sent to "A.D.A. Askley Keil, 2100 Bloomdale Rd., McKinney, TX 75071," and the returned green card addressed to Keil at the same 2100 Bloomdale Road address. Both the receipt and the green card bear the same tracking number. In her [*17] affidavit, Bogert lists these attached items as follows: "(Form II), . . . (Form III), . . . (Form IV), Mail Receipt of when *these* forms were *sent and received* by Certified Mail (emphasis added)." Bogert's affidavit supports the conclusion that the attached IADA forms II, III, and IV were sent to the addressee Ashley Keil by certified mail, return receipt requested.

As for the green card addressed to Ashley Keil, Sommers was the person specifically designated on May 2, 2014 to retrieve all mail, including all certified mail, sent to county offices other than the tax office. As Dobecka testified, his office acted on behalf of the Collin County D.A.'s Office in collecting their mail and both he and Sommers were *agents* of the D.A.'s Office for the purpose of picking up the mail. Based on this testimony and the other evidence in the record, the trial court could not have reasonably concluded appellant's IADA request was not delivered to the prosecuting attorney's designated agent on May 2, 2014. *See, e.g.*, Tex. R. Civ. P. 21a (allowing service to a duly authorized agent); Ex parte Combs, 638 S.W.2d 540, 541 (Tex. App.—Houston [1st Dist.] 1982, no writ) ("Moreover, the record shows that the notice was sent to the relator by certified mail at an

[3]The State also argues we should apply the clearly erroneous standard of review, e.g., it was not *clearly erroneous* for the trial court to have concluded the IADA request was not delivered to the prosecuting attorney. As we previously noted, however, the trial court did not make any findings of fact in this case. *See* Kirvin, 394 S.W.3d at 555 n.8.

address in Oklahoma, and the return receipt [*18] was signed by Marie Combs, who was not shown to be the relator's duly authorized agent or attorney of record for service, as required by Tex[as] *Rules Civil Procedure 21a*.").

Nor are we persuaded by the State's reliance on *Fex v. Michigan, 507 U.S. 43, 113 S. Ct. 1085, 122 L. Ed. 2d 406*, which concerned the application of the prison mailbox rule in the context of the IADA. *See, e.g., Longenette v. Krusing, 322 F.3d 758, 762 (3d Cir. 2003)* (discussing *Fex*). In *Fex*, the prosecuting state brought the prisoner to trial 196 days after he delivered his request to prison authorities, but only 177 days after the prosecutor received the request. *Fex, 507 U.S. at 46*. The defendant argued that fairness required the burden of compliance with the IADA to be placed entirely on the law enforcement officials because the prisoner had little ability to enforce compliance. *Id. at 52*. The Supreme Court focused on the IADA's specific language: "[The detainee] shall be brought to trial within one hundred and eighty days after he *shall have caused to be delivered* to the prosecuting officer . . . written notice of the place of his imprisonment and his request for final disposition . . . ." *Id. at 45 n.1* (emphasis added). The Court concluded this language meant that the 180-day period could not begin to run "until the prisoner's request for final disposition of the charges against him has actually [*19] been delivered to the court and prosecuting officer of the jurisdiction that lodged the detainer against him." *Id. at 52*. *Fex* does not resolve the instant case, however, where the evidence shows appellant did everything he was required to do under Article III and that delivery was in fact made upon both the court and the prosecuting attorney.[4]

We conclude appellant satisfied his burden of proving compliance with the requirements of Article III. The evidence in this case, even when viewed in the light most favorable to the trial court's ruling, shows appellant complied with his obligations under the IADA and that the prosecuting office, through its designated agent, received notice of appellant's request for final disposition along with all of the required documentation. [*20] Hence, because appellant was not tried in Texas before the expiration of the 180-day deadline, the trial court abused its discretion by overruling appellant's motion for new trial. We reverse the trial court's judgment and remand this case to the trial court for dismissal of the charges. We do not address appellant's second issue.

/s/ Lana Myers

LANA MYERS

JUSTICE

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TEX. R. APP. P. 47

JUDGMENT

Based on the Court's opinion of this date, the judgment of the trial court is **REVERSED** and the cause **REMANDED** for further proceedings consistent with this opinion.

Judgment entered this 14th day of June, 2016.

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[4] We likewise distinguish *Bowling v. State, 918 N.E.2d 701 (Ind. Ct. App. 2009)*, which is also cited by the State. In *Bowling*, the Indiana court of appeals upheld a trial court's refusal to dismiss under the IADA despite a certified mail receipt that was signed for by an employee of the prosecutor's office. *Id. at 705-06*. As the court stated in the opinion, however, there was no evidence as to what was sent to the prosecutor's office *and* no evidence any notice was sent to the trial court. *Id. at 706* (citing *Fex, 507 U.S. at 47*).